

The revisions authorize GSCC to issue shares in response to an extraordinary corporate action (e.g., a joint business venture). Pursuant to such an issuance, GSCC may exchange or transfer such shares for cash in any amount or for any noncash consideration.

If a shareholder ceases to be a GSCC participant, GSCC may mandate the sale to itself of shares of such a shareholder at book value.<sup>17</sup> However, the proposal also authorizes GSCC to offer to repurchase shares for any price determined by the board under such circumstances.

#### D. Miscellaneous Amendments

The proposal deletes loss allocation provisions in the Agreement that are redundant with the loss allocation provisions set forth in GSCC's rules. All timing references and procedures specific to the period between 1988 and 1991 contained in the Agreement are removed. In addition, provisions naming a specific individual to hold one NSCC director seat and another specific individual to act as the management director for purposes of the 1988 annual meeting are removed.

The supermajority voting requirements<sup>18</sup> with respect to future amendments of the Agreement are removed. However, GSCC retains the requirement that an affirmative vote of at least eighty percent of the entire board is required to change its business from that of a registered clearing agency including any change that would put GSCC in the business of being a broker or of performing brokered transactions. Moreover, for the protection of its shareholders and members, any change of business that puts GSCC in competition with clearing agent banks is subject to a veto by a unanimous vote of all the clearing agent bank directors and one other participant director.

#### II. Discussion

Section 17A(b)(3)(C)<sup>19</sup> of the Act requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. In the release announcing standards for the registration of clearing agencies ("Standards Release"), the

Division of Market Regulation ("Division") stated that rather than prescribing a single method for providing fair representation, the Division would evaluate each clearing agency's procedures on a case-by-case basis.<sup>20</sup> The Standards Release provided several examples of procedures that could be used to satisfy the fair representation requirement, including solicitation of board of directors nominations from all participants and selection of director candidates by a nominating committee selected by the participants.

The Commission believes that GSCC's proposal is consistent with its obligations under the Act because it provides participants with a meaningful opportunity to participate in GSCC's election process. The board, which should be responsive to participant concerns, will designate the members of the nominating committee. GSCC participants will have the opportunity both informally and formally to nominate candidates for board seats. If there is a contested election, GSCC participants will have the opportunity to vote for participant directors. Therefore, the Commission believes that GSCC's procedures should provide fair representation to its members.

The Commission also believes that the changes to the composition of the board will provide enhanced fair representation. Several classes of participants that did not fit within the eligible categories of participant directors are now represented by the general user participant category. Thus, the Commission believes that GSCC's proposal is consistent with its obligations to assure the fair representation of participants.

The Commission finds that the removal of certain restrictions on the issuance and transfer of GSCC shares may assist GSCC in operating efficiently as a clearing agency. By exercising its right of first refusal, GSCC will be able to ensure that ownership of GSCC is limited to industry participants. Thus, GSCC's primary focus will continue to be on the clearance and settlement of securities. Also, GSCC may be better able to respond quickly to new business ventures by having the ability to issue shares in connection with new operations.

Finally, the Commission finds that the remaining miscellaneous amendments to the Agreement, such as the deletion of the loss allocation provision, the removal of obsolete references, and the removal of the supermajority voting

requirements, provide for a more flexible and efficient operation of GSCC and, therefore, are consistent with the requirements of the Act. For example, by eliminating supermajority voting requirements, GSCC will be able to make necessary changes in its operations on an expedited basis.

#### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-97-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39378; File No. SR-MSRB-97-04]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Its Arbitration Code

December 1, 1997.

#### I. Introduction

On May 22, 1997, the Municipal Securities Rulemaking Board, Inc. ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule G-35, the Board's Arbitration Code. The proposed rule change would create two new sections: Section 37 would state that the Board will not accept any new arbitration claims filed on or after January 1, 1998; and Section 38 would provide that, as of January 1, 1998, every bank dealer (as defined in Rule D-8) shall be subject to

<sup>17</sup> Previously, GSCC had the discretionary right to repurchase its shares provided that GSCC repurchases all of the shares for \$500 per share.

<sup>18</sup> Prior to the proposed rule change, the Agreement set forth a number of supermajority board voting requirements that had to be met in order to make certain changes to the Agreement, including classification of directors, procedures for electing and replacing directors, provisions related to loss allocation, and procedures and requirements for amending the Agreement.

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>20</sup> Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 30086.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. New Section 38 would further provide that each bank dealer shall be subject to, and shall abide by, the NASD's Code of Arbitration Procedure as if the bank dealer were a "member" of the NASD.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38935 (August 14, 1997), 62 FR 44501 (August 21, 1997). One comment letter was received on the proposal.<sup>3</sup> The Exchange submitted Amendment No. 2 to the proposed rule filing on November 13, 1997.<sup>4</sup> This order approves the proposed rule change, as amended.

## II. Description

The Board's arbitration program, which is limited to the resolution of disputes involving municipal securities, has been in effect since December, 1978. The Board has determined that, effective January 1, 1998, it will no longer accept any new claims filed with its arbitration program. The Board will, however, continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998, but will discontinue its arbitration program when all such cases have been closed.<sup>5</sup>

Currently, any customer or securities dealer with a claim, dispute, or controversy against a dealer involving its municipal securities activities may submit that claim to the arbitration forum of any SRO of which the dealer is a member, including the NASD. Bank dealers, however, are unique in that

they are subject to the Board's rules but are not members of any other SRO. In light of the Board's decision not to accept any new arbitration claims on or after January 1, 1998, the proposed rule change amends Rule G-35 to state this and to provide an alternative forum for claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

Pursuant to the proposed rule change, the bank regulatory agencies (i.e., the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation) would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. Thus, for example, a bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35, since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

In addition, the proposed rule change will amend Rule G-35, Section 31(h), to make publicly available the names of arbitrators on all customer awards rendered through the Board's arbitration program after May 10, 1989.<sup>6</sup>

## III. Summary of Comments

The Commission received one comment letter relating to the proposed rule change.<sup>7</sup> The commenter states that his company collects arbitration awards and that they obtain information on these awards through the Public Awards Program of the various arbitration forums, which they can then make available to people who seek information about past arbitration awards. The commenter states that parties and counsel seek the past history

of arbitrators that are appointed to hear their cases; therefore, they need to know the names of the arbitrators who decided particular awards. The commenter states that the NASD currently makes arbitrator names for public arbitration awards publicly available (and do so retroactively to May 10, 1989), and that the MSRB is the only SRO that does not make arbitrator names publicly available.

The commenter wants to know whether MSRB cases that will be arbitrated by the NASD will be made public, along with the names of the arbitrators. The commenter requests that the MSRB make publicly available its public arbitration awards, including the arbitrator names, retroactively to May 10, 1989 and prospectively in the future, so that the NASD will be able to continue its practice of making a list of arbitrators' past awards to parties when they appoint arbitrators.

## IV. Discussion

The Commission finds that the proposed rule change is consistent with Sections 15B(b)(2) (C) and (D) of the Act, which provide, respectively, that the Board's rules be designed, in general, to protect investors and the public interest, and, if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities because the proposed rule change ensures that there is a fair arbitration forum available for all MSRB arbitration claims.<sup>8</sup>

The Commission believes that it is consistent with the Act to allow the MSRB to send its arbitration cases to the NASD for arbitration, in part because the Board believes its declining caseload makes it difficult to justify the cost of continuing to operate its own arbitration program.<sup>9</sup> The Commission also

<sup>3</sup> See letter from Richard P. Ryder, Editor, Securities Arbitration Commentator, to Margaret H. McFarland, Deputy Secretary, Commission, dated September 10, 1997.

<sup>4</sup> Amendment No. 2 was submitted in response to the comment letter received on the proposed rule filing. Amendment No. 2 states that the Board has reviewed the comment letter and has determined to amend its arbitration code to make publicly available the names of arbitrators for all customer awards rendered after May 10, 1989. The Board believes that this amendment will facilitate the NASD's administration of those arbitration claims received after January 1, 1998 involving the municipal securities activities of brokers, dealers and municipal securities dealers where an arbitrator appointed to such a case previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. See letter from Jill C. Finder, Assistant General Counsel, MSRB, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 12, 1997.

<sup>5</sup> At such time, the Board will submit a filing to the Commission to delete sections 1 through 36 of Rule G-35, as well as new Section 37, and to rescind Rule A-16 on arbitration fees and deposits.

<sup>6</sup> See Amendment No. 2, *supra* note 4.

<sup>7</sup> See *supra* note 3.

<sup>8</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> According to the Board, its caseload grew steadily for a time; for example, 21 cases were received in 1980, 82 in 1986, and 115 in 1988. Between 1978 and 1993, the NASD automatically transferred to the Board's arbitration program any claims received involving municipal securities, and until approximately 1993 the majority of the Board's cases were received in this manner. The NASD also transferred cases (other than those involving municipal securities) to other self-regulatory organizations ("SROs"), such as the New York Stock Exchange and the American Stock Exchange, if the particular claim arose out of a transaction in that SRO's market. In 1993, the NASD amended its arbitration code to require a customer's consent before it could transfer a case to another SRO. The practical effect of this amendment has been to virtually halt the transfer of municipal cases to the Board's arbitration program because customers choose to remain at the

believes that procedurally the proposed rule change should adequately ensure that all arbitration cases that would be subject to the MSRB arbitration process will be provided for under the NASD's arbitration program. Those MSRB members who are also NASD members, or members of another SRO with an arbitration forum, will be able to use that SRO's arbitration forum.<sup>10</sup> Those MSRB members who are not also members of another SRO (the bank dealers) will now be deemed "members" of the NASD for purposes of arbitrating claims involving the municipal securities activities of bank dealers. The proposed rule change accomplishes this by subjecting every bank dealer, as of January 1, 1998, to the NASD's Code of Arbitration Procedure for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. In addition, the proposed rule change requires that bank dealers abide by the NASD's Code just as if they were members of the NASD for purposes of arbitration.

In addition, the Commission believes that the proposed rule change adequately provides for the enforcement of amended Board Rule G-35 because the enforcement mechanism for bank dealers would not be altered. The bank regulatory agencies<sup>11</sup> would continue to be responsible for the inspection and enforcement of bank dealers' municipal securities activities, including arbitration. A bank dealer's failure to pay an arbitration award rendered pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35, since it is that rule, as amended, that subjects bank dealers to the NASD's Code. Similarly, a bank dealer's refusal to submit to arbitration pursuant to the NASD's Code of Arbitration Procedure would constitute a violation of Board Rule G-35. The NASD would notify the Board of any such violations and the Board, in turn, would contact the appropriate bank regulatory agency.

Finally, the Board provides adequate measures for the transition from the

MSRB arbitration forum to the NASD arbitration forum. Even though the Board will no longer accept any new claims filed with its arbitration program after January 1, 1998, it will continue to operate its program in order to administer its current, open cases and any new claims received prior to January 1, 1998. The Board will then discontinue its arbitration program when all such cases have been closed.<sup>12</sup>

The Commission notes that the MSRB stated that the Board will cover any costs associated with the NASD arbitrating cases involving the bank dealers that are not covered by the fees bank dealers will pay as parties to an arbitration proceeding, until such time as the NASD receives approval to amend its fees to cover such costs. As members of the NASD for arbitration purposes, bank dealers will pay the same arbitration fees as NASD members. The NASD has also stated that if the number of cases received from the MSRB were to increase substantially, the NASD would want to revisit the fee issue.<sup>13</sup>

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 is responsive to the commenter's request that the Board publicly disclose the names of arbitrators on all customer-related awards rendered after May 10, 1989 by amending Rule G-35 to make those names publicly available. This amendment should help facilitate the NASD's administration of municipal securities arbitration claims, and will allow the public to receive more accurate and complete information on an arbitrator's past arbitration activities, where an arbitrator appointed in a case has previously served as an arbitrator in the Board's program but has never served as an NASD arbitrator. Accordingly, the Commission believes that it is consistent with Section 15B of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

<sup>12</sup> The Commission notes that the Board has stated that at that time it will submit a filing to the Commission to delete sections 1 through 36 of Rule G-35, as well as new Section 37, and to rescind Rule A-16 on arbitration fees and deposits.

<sup>13</sup> The Commission notes that if the NASD were to file a proposed rule change to amend fees that apply to its members, and that also apply to the bank dealers, it would be able to file that change under Section 19(b)(3)(A) of the Act, if it otherwise met the criteria. However, if the NASD were to file a proposed rule change that only affected fees for the bank dealers, that change would have to be filed under Section 19(b)(2) of the Act so that the bank dealers would have adequate notice and time to comment on the proposal.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-97-4 and should be submitted by December 29, 1997.

## V. Conclusion

*It is therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-MSRB-97-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39357; File No. SR-NASD-97-82]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Computer Assisted Execution Service and Intermarket Trading System/Computer Assisted Execution Service Fees

November 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> notice is hereby given that on November 10, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

NASD. Consequently, the Board's caseload has declined dramatically from 115 cases received in 1988 to 10 cases received in 1996. As of the time of the filing of the proposed rule change, the Board had received two cases in 1997.

<sup>10</sup> The Commission notes that if another SRO wanted to eliminate its arbitration program and send its cases to the NASD, it would be required to file a rule filing under Section 19(b) of the Act, and the Commission would independently consider any such filing.

<sup>11</sup> The Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation.